

OFFICE OF THE ATTORNEY GENERAL



94-00089

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STATE OF ALABAMA

FEB 24 1994

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Honorable Woodford W. Dinning, Jr.
Attorney, Marengo County Commission
P. O. Box 545
Linden, AL 36748

Counties - Municipalities -
Roads, Highways and Bridges -
Annexation

The county has the authority
and responsibility for main-
taining county roads and
bridges that lie within the
corporate limits of a munici-
pality unless the procedure
set forth in Code of Alabama
1975, §§ 11-49-80 and
-81, is followed.

Dear Mr. Dinning:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION

This being true, the Commission
voted to instruct me to contact the Office
of the Attorney General to determine
whether the Commission would be liable and
responsible for maintenance and repair of
the road and bridge, including replacement
of the bridge.

FACTS AND ANALYSIS

Your request presents the following facts:

As Attorney for the Marengo County Commission, our County Engineer presented a copy of your opinion concerning county roads within municipalities. After a discussion of the situation in Marengo County, the Commission voted to request additional information or clarification, with respect to the situation we have here in Marengo County. Until about two years ago, a county road was adjacent to the city limits of Demopolis, Marengo County, Alabama, but outside the city limits. Then, the City annexed additional land through the Legislature, and this put the county road inside the city limits. There is a bridge on the road, which needs to be replaced, at a considerable expense. Based on an earlier A.G. opinion, the Commission voted to allow Demopolis to replace the bridge, if desired. Now, it appears that the opinion of August 19, 1993, places the maintenance and repair of the road and bridge back on the Commission, and there could be potential liability if the bridge is not replaced.

In Yates v. Town of Vincent, 611 So.2d 1040 (Ala. 1992), the Supreme Court of Alabama held that, unless the provisions of Code of Alabama 1975, §§ 11-49-80 and -81 have been followed, the authority to control, manage, maintain, and regulate a county road located within the municipal limits of a city remains the responsibility of the county. Those cited sections call for negotiation of payment by the county to the municipality in order to be relieved of the responsibility of maintaining such street or streets. The term "street" as used here, of course, includes bridges. The authority to so maintain and repair would, naturally, carry along with it the liability, if any, of not doing so.

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CONCLUSION

The county has the authority and responsibility for maintaining county roads and bridges that lie within the corporate limits of a municipality unless the procedure set forth in Code of Alabama 1975, §§ 11-49-80 and -81 is followed.

We do, however, note the following quote from the opinion to Honorable Roy M. Dobbs, Mayor of Berry, under date of August 19, 1993 (93-00298):

"This opinion does not mean, nor should it be interpreted to cover, any question of county/city roads and streets other than the single question presented. The 'duty' to maintain may in some instances be a factual, rather than a legal, issue. See Garner v. Covington County and City of Opp, [Ms. 1911100, June 25, 1993] ____ So.2d ____ (Ala. 1993).

"All prior opinions are hereby modified to the extent they are inconsistent with this opinion."

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JE/CJS/jho
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